provision of the state constitution as to the manner of electing Congressmen cannot be overridden by an act of the assembly.[7] This may be supported on the theory either that the constitution-making body is included in "Legislature," or that members of the assembly acting contrary to the state constitution are not included in that term. The members of the assembly in joint convention cannot pass a rule that a mere plurality of the joint meeting shall elect a United States Senator; [8] only the Legislature acting through its two branches separately is competent to enact such a law. It has recently been held that an act of the assembly establishing Congressional districts is not effective until there is a compliance with a provision of the state constitution for a compulsory referendum on petition of a certain number of voters. *State ex rel. Schrader* v. *Polley*, 127 N. W. 848 (S. D.). On the same reasoning the governor might veto such an act, if the organic law of the state gives him a veto on legislation.

But where the Constitution vests other than law-making powers in certain persons designated as the "Legislature," that word should be taken in its popular sense. A joint convention of the members of the legislature may elect a Senator.[9] The right to apply for a convention to propose amendments to the federal Constitution [10] is clearly not legislative; thus the early applications for a constitutional convention by the Virginia (1788) and New York (1789) legislatures were not signed by the governors.[11] It is more doubtful in which class the power of ratifying such amendments belongs but the gubernatorial approval seems not to have been deemed necessary. The ratification of the Fourteenth Amendment was formally approved by governors of only fifteen states.[12] No instance is known in which the ratification was vetoed. In New Jersey, the governor vetoed the attempted rescission of ratification and it was passed over his veto.[13] The consent of the legislature to the formation of new states out of the territory of old ones [14] and to the purchase of sites for forts, etc.[15] must also be taken as belonging to this latter class.

THE MEANING OF "ACCIDENT" IN PERSONAL ACCIDENT AND EMPLOYERS' LIABILITY INSURANCE. — Most personal accident insurance policies cover "injuries effected through external, violent, and accidental means." While the courts have given little effect to the words "external"

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[7] This question has arisen several times in connection with contested seats in the House of Representatives. The reports of the committee of elections and action by the House are neither uniform nor clear; but it must be confessed that authority is pretty evenly divided. See Shiel *v.* Thayer, 1 Bartlett, Contested Election Cases, 349; Baldwin *v.* Trowbridge, 2 *id.* 46; Donnelly *v.* Washburn, 1 Ellsworth, Contested Election Cases, 439.

[8] John P. Stockton, Taft, Senate Election Cases 264.

[9] Fitch and Bright *v.* Lane and McCarty, Taft, Senate Election Cases 164.

[10] U. S. CONST., Art. V.

[11] See 1 AM. STATE PAPERS (MISC.) 6, 7. Many but not all of the more recent applications have been formally approved by the governors, see 42 CONG. RECORD 5514.

[12] See 2D SESS., 40TH CONG., 2 SEN. EXEC. DOCS. No. 75; 6 RICHARDSON, MESSAGES AND PAPERS OF THE PRESIDENTS, 657–660.

[13] See FLACK, ADOPTION OF THE FOURTEENTH AMENDMENT, 167.

[14] U. S. CONST., Art. IV, sec. 3, § 1.

[15] U. S. CONST., Art. I, sec. 8, § 17.

and "violent," [1] difficult questions continually arise depending on the interpretation of "accidental." [2] It is agreed that in these contracts the word should be given its popular meaning,[3] but the definition of accident [4] does not furnish an adequate legal test.[5] Often the question is left to the jury,[6] usually because there is doubt as to what the circumstances were. Whether given circumstances constitute an accident or not should, it is submitted, be a question for the court.

Three distinct classes of problems must be considered. First, what is the nature of an accident? It is not necessarily a single, sudden occurrence.[7] An accident to the insured may come from the operation of a natural force,[8] the act of an animal,[9] the act of another human being, even if injury is intended by him,[10] or a slip by the insured himself.[11] And it may be caused by the negligence,[12] but not by the design,[13] of the insured. Although judges often say that the event must be unexpected and unforeseen by the insured,[14] the actual holdings bar nothing short of mishaps foreseen and recklessly disregarded.[15]

The second problem is whether there can be a recovery for unexpected

[1] See VANCE, INSURANCE, 569.

[2] Policies often contain express provisions which prevent such problems as are discussed in this note from arising. For a common form of policy, see RICHARDS, INSURANCE, 764.

[3] See Schmid *v.* Ind., etc. Assn., 42 Ind. App. 483, 495; U. S., etc. Assn. *v.* Newman, 84 Va. 52, 58.

[4] The definition most often quoted is that of WEBSTER'S DICTIONARY, " an event that takes place without one's foresight or expectation." For a collection of definitions, see 30 L. R. A. 206, note.

[5] See VANCE, INSURANCE, 566.

[6] See U. S., etc. Assn. *v.* Barry, 131 U. S. 100; Bailey *v.* Interstate Casualty Co., 8 N. Y. App. Div. 127.

[7] Western, etc. Assn. *v.* Smith, 85 Fed. 401 (abrasion of skin from wearing new pair of shoes).

[8] Northwestern, etc. Assn. *v.* London, etc. Co., 10 Manit. 537 (freezing); Manufacturers' Accident Indemnity Co. *v.* Dorgan, 58 Fed. 945 (drowning).

[9] Farner *v.* Mass., etc. Assn., 219 Pa. St. 71 (dog bite); Omberg *v.* U. S., etc. Assn., 101 Ky. 303 (insect bite).

[10] Fidelity and Casualty Co. *v.* Johnson, 72 Miss. 333 (hanged by mob); American Accident Co. *v.* Carson, 99 Ky. 441 (murdered).

[11] Bailey *v.* Interstate Casualty Co., *supra* (slip in injecting hypodermic needle); American Accident Co. *v.* Reigart, 94 Ky. 547 (choking while eating).

[12] Travelers' Ins. Co. *v.* Randolph, 78 Fed. 754; Schneider *v.* Provident Life Ins. Co., 24 Wis. 28. *Contra*, Morel *v.* Miss. Valley Life Ins. Co., 4 Bush (Ky.) 535. This case seems to stand alone. See 30 L. R. A. 207, note.

[13] Whitlatch *v.* Fidelity and Casualty Co., 149 N. Y. 45 (suicide); Laessig *v.* Travelers' Protective Assn., 169 Mo. 272 (suicide). But suicide while insane is an accident. Accident Ins. Co. *v.* Crandal, 120 U. S. 527.

[14] It has also been said that the event must not be one more likely to occur than to fail. See Western, etc. Assn. *v.* Smith, *supra*, 405.

[15] Apparently the only cases denying recovery for the results of an external violent event on the ground that it was foreseen are those in which the insured attacked a man under circumstances in which injury to himself was well-nigh sure to result. See Fidelity and Casualty Co. *v.* Stacey's Executors, 143 Fed. 271; Taliaferro *v.* Travelers' Protective Assn., 80 Fed. 368. Recovery has been allowed where the insured started a fight without great apparent danger to himself. Union, etc. Co. *v.* Harroll, 98 Tenn. 591; Ins. Co. *v.* Bennett, 90 Tenn. 256. And in some cases the question whether injury was foreseen or not seems not to have been considered. See Richards *v.* Travelers Ins. Co., 89 Cal. 170. Drowning during a very perilous attempt to save life has been held an accident. Tucker *v.* Mutual Benefit Life Co., 50 Hun (N. Y.) 50 (affirmed 121 N. Y. 718). See also Da Rin *v.* Casualty Co of America, 108 Pac. 649 (Mont.); JOYCE, INSURANCE, § 2863.

injuries arising from a voluntary movement, carried out as expected.[16] While some courts regard it as sufficient that the result of the movement is something unexpected and unusual,[17] others have held that the phrase "accidental means" contemplates a casualty distinct from the injury itself.[18] There is more reason for calling accidental those injuries due to the rupture of normal tissues than to the rupture of tissues so diseased that they would of themselves sooner or later give away, but this distinction seems not to have been taken.[19] Cases closely allied to this are those involving unintentional injuries from poison and unsound food.[20] These questions are all extremely nice, but as the policy should be construed most strongly against the underwriter,[21] all the contingencies mentioned in this paragraph should be covered as "injuries effected through accidental means."

The third problem is whether the policy covers disease. In personal accident insurance it is well settled that disease contracted without violence is not covered.[22] But under an employers' liability policy against loss "for damages on account of bodily injuries accidentally suffered by employees of the assured," a recovery was recently allowed where an employee was infected with glanders. *Hood & Sons* v. *Maryland Casualty Co.*, 206 Mass. 223.[23] As it is impossible to differentiate between diseases, like glanders, caused by taking *bacteria* into the system through the skin, and diseases caused by the germs' entering the system through the mouth or nostrils, the necessary result of this decision would be to allow recovery for diseases of the latter kind, whenever the employer is responsible for them.[24] This decision seems correct. While in personal accident insurance, the idea of external violence, even if not expressly mentioned, is the basis of the peril insured against,[25] in employers' liability policies the basis is liability for torts. Furthermore, one of the commonest meanings of "accidentally" is "un-

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[16] The injuries in question include sprains, ruptures of blood vessels and intestines, and injuries to the heart.

[17] See Hamlyn *v.* Crown Accidental Ins. Co., [1893] 1 Q. B. 750 (dislocation of cartilage); Horsfall *v.* Pacific, etc. Co., 32 Wash. 132 (dilation of heart).

[18] See Clidero *v.* Scottish, etc. Co., 29 Scot. L. R. 303 (displacement of colon); Shanberg *v.* Fidelity and Casualty Co., 158 Fed. 1 (fatty degeneration of heart).

[19] See Feder *v.* Iowa, etc. Assn., 107 Ia. 538, 542.

[20] But few of these cases have come up. As far as decided, the law seems to be that injury from a mistake as to the amount taken is covered, Baylis *v.* Travellers' Ins. Co., 113 U. S. 316; but not an injury due to misjudging the effect of a known amount, Carnes *v.* I. S. T. M. Assn., 106 Ia. 281; or due to unsound food thought to be sound. See Maryland Casualty Co. *v.* Hudgins, 72 S. W. 1047 (Tex.), and in the court above, 76 S. W. 745, 748 (Tex.); American Accident Co. *v.* Reigart, 94 Ky. 547, 550.

[21] This doctrine has been repeatedly mentioned in connection with this very point in accident insurance. See Northwestern, etc. Assn. *v.* London, etc. Co., *supra*, 543; Paul *v.* Travelers' Ins. Co., 112 N. Y. 472, 479.

[22] See Sinclair *v.* Maritime, etc. Co., 3 E. & E. 478 (sunstroke); Dozier *v.* Fidelity and Casualty Co., 46 Fed. 446 (sunstroke).

[23] *Accord* Columbia, etc. Co. *v.* Fidelity and Casualty Co., 104 Mo. App. 157 (kidney disease). The same result has been reached under the English Workmen's Compensation Act, where the words are "injuries by accident." Brintons, Ltd. *v.* Turvey, [1905] A. C. 230 (anthrax); Higgins *v.* Campbell & Harrison, Ltd. [1904] 1 K. B. 328 (anthrax).

[24] But see Brintons, Ltd. *v.* Turvey, *supra*, 233; Higgins *v.* Campbell & Harrison, Ltd., *supra*, 338.

[25] See Sinclair *v.* Maritime, etc. Co., *supra*, 485.

intentionally."[26] To be sure, interpreted thus, the word "accidentally" adds nothing to the meaning of the phrase, since the employer incurs no liability for injuries intentionally inflicted by an employee upon himself. But the language does not unambiguously narrow the peril to what would be an "accident" in personal accident insurance, and being capable of two fair constructions, should be construed in favor of the insured.[27]

THE DOCTRINE OF CLAFLIN *v.* CLAFLIN. — In a recent case the court, feeling itself bound by the *dictum* in *Nichols* v. *Eaton*,[1] adopted the doctrine of *Claflin* v. *Claflin*,[2] and permitted the testatrix to provide for the postponement of the enjoyment of a present vested gift until four years after the majority of the legatee. *King* v. *Shelton*, 38 Wash. L. R. 714 (D. C., Ct. App., Nov. 2, 1910). The doctrine enunciated in the principal case has been much criticized. In the first place, it is said that it tends to infringe upon the rule against perpetuities; but this is not so, for that rule determines the time within which interests must vest, but does not govern the postponement of enjoyment, the propriety of which is properly considered in connection with the doctrine of restraints on alienation.[3]

In England it is well settled that when one is entitled absolutely to property, any direction postponing its transfer or payment to him is void, on the ground that it is contrary to public policy that a man having the entire interest in property should be restrained in the use or disposition of it.[4] But an exception has been made in the case of married women, for whose benefit during coverture a restraint is allowed even upon an estate in fee simple.[5]

In many of the United States the strict English rule has been departed from, and restraints in the form of spendthrift trusts have been allowed.[6] The doctrine of the main case permitting a further restraint on alienation has not been widely accepted, but has become firmly established in Massachusetts[7] and Illinois,[8] and has been recognized in the federal courts.[9]

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[26] See WEBSTER'S DICTIONARY.

[27] This general principle of construction has been recognized in employers' liability insurance, as well as other branches. See Columbia, etc. Co. *v.* Fidelity and Casualty Co., *supra*, 167; Cornell *v.* Travelers' Ins. Co., 66 N. Y. App. Div. 559, 562. But the full argument advanced in the text above has not been mentioned in any case. The principal case merely followed the English decisions under the Workmen's Compensation Act, and in Columbia, etc. Co. *v.* Fidelity and Casualty Co., *supra*, the court intimated its disapproval of the accident insurance cases barring disease. See Columbia, etc. Co. *v.* Fidelity and Casualty Co., *supra*, 172, 173.

[1] 91 U. S. 716, 725.

[2] 149 Mass. 19.

[3] Armstrong *v.* Barber, 239 Ill. 389, 397.

[4] The rule is equally applicable whether the gift is to a natural person, Saunders *v.* Vautier, 4 Beav. 115; s. c. Cr. & Ph. 240; or a charity, Wharton *v.* Masterman, [1895] A. C. 186.

[5] Baggett *v.* Meux, 1 Phil. 627.

[6] See GRAY, RESTRAINTS ON ALIENATION, 2 ed., § 177 *a*.

[7] See Dunn *v.* Dobson, 198 Mass. 142, 146.

[8] Lunt *v.* Lunt, 108 Ill. 307; Wagner *v.* Wagner, 244 Ill. 101.

[9] Stier *v.* Nashville Trust Co., 158 Fed. 601 (*per* Lurton, J.). Some jurisdictions